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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/037,669	01/03/2002	Mark T. Feuerstraeter	42390P11856	8280

8791 7590 12/19/2007  
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EXAMINER	
NGUYEN, STEVEN H D	

ART UNIT	PAPER NUMBER
2619	

MAIL DATE	DELIVERY MODE
12/19/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Office Action Summary**

Application No.

10/037,669

Applicant(s)

FEUERSTRAETER ET AL.

Examiner

Steven H.D Nguyen

Art Unit

2619

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 19 September 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 37-54 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 37-54 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>10/2007</u> . | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Continued Examination Under 37 CFR 1.114*

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 9/19/2007 has been entered.

### *Claim Rejections - 35 USC § 101*

2. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

3. Claims 49-54 rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter because the claims which are directed *A machine-readable medium comprising instructions which, when executed, cause a machine to*, do not includes encode with a computer program, software, a computer executable instruction or storing, embodied with, encoded with, having stored or having an encoded computer program which is executed by a computer to perform the steps. Therefore, the claims can read as a carrier wave or punch card or paper, a none executable file that having the computer program that has a set of instructions which is received and executed by a computer.

***Claim Rejections - 35 USC § 102***

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 37, 41-43, 47-49 and 53-54 rejected under 35 U.S.C. 102(e) as being anticipated by Lee (USP 6859435).

As claims 37, 43 and 49, Lee discloses a method, system and software comprising receiving a control message from an Ethernet switch (Col. 5, lines 52 to col. 6, lines 25 and col. 9, lines 32-40, col. 13, 6267 and col. 14, lines 1-10, receiving a feedback message), the control message identifying a priority level from among a plurality of priority levels; and based on the control message, pausing transmission of Ethernet frames associated with lower priority levels than the priority level (Col. 5, lines 52 to col. 6, lines 25 and col. 9, lines 32-40, col. 13, 62-67 and col. 14, lines 1-10, allowing the packets to pass the node if they have priority which is greater or equal the value in the feedback message).

As claims 41, 47 and 53, Lee discloses resuming the transmission of Ethernet frames associated with the lower priority levels than the priority level upon receiving another control message or upon completion of a predetermined time period as specified in the control message (Col. 6, lines 20-25 and col. 14, lines 1-11).

As claim 42, 48 and 54, Lee discloses based on the control message, pausing the transmission of Ethernet frames associated with higher priority levels than the priority level (Col. 5, lines 52 to col. 6, lines 25 and col. 9, lines 32-40, col. 13, 62-67 and col. 14, lines 1-10).

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 38-40, 44-46 and 50-52 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lee in view of Williams.

As claims 38, 44 and 50, Lee discloses each buffer associated with a different priority excepted for failing to disclose monitoring a plurality of queues to buffer Ethernet frames, each queue associated with a different priority level, wherein the monitoring is performed at the Ethernet switch. However, in the same field of endeavor, Williams discloses monitoring a plurality of queues to buffer Ethernet frames, each queue associated with a different priority level, wherein the monitoring is performed at the Ethernet switch (Fig 6).

Since, Lee discloses each buffer associated with priority. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to apply a method and system for monitoring each priority queue in order to determine congestion in a priority queue as discloses by Williams into the teaching of Lee. the motivation would have been to prevent data lost.

As claims 39-40, 45-46 and 51-52, Lee discloses a method for using thresholds to determine the available space to be used to receive the frames for a buffer and generating a pause message include the priority level for triggering a stop. However, Lee fails to disclose comparing each queue with a threshold. Williams discloses comparing use of each of the

plurality of queues with a threshold relating to queue capacity for the transmission of Ethernet frames; based on the comparing, identifying the priority level associated with a queue; and generating the control message identifying the priority level and communicating the control message to trigger the pausing of the transmission of Ethernet frames (Fig 5).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to apply a method and system as disclosed by Williams into the teaching of Lee. the motivation would have been to prevent data lost.

#### ***Response to Arguments***

7. Applicant's arguments filed 9/19/07 have been fully considered but they are not persuasive.

8. The applicant states that Lee does not disclose a method and system for receiving a pause message which includes a priority value which is used to pause the frames having the priority less than the received priority. In reply, Lee discloses a method and system for receiving a feedback message such as pause message includes a priority value which is used to pause the packet having priority less than the received priority value (See col. 13, lines 33-40).

#### ***Conclusion***

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Iliaadis (US 5742606) discloses a method and system for generating a backpressure having a value which is used to pause the packets having the priority value less than or equal the received value.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven H.D Nguyen whose telephone number is (571) 272-3159. The examiner can normally be reached on 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jayanti Patel can be reached on (571) 272-2988. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Steven H.D Nguyen  
Primary Examiner  
Art Unit 2619